**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
AT JODHPUR**

S. B. CRIMINAL MISC. PETITION NO. 229/2006

KRISHNA BALDEV SHARMA
v
STATE OF RAJASTHAN & ANOTHER

Date of Judgment: 15th May, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Vimal Choudhary for the petitioner.
Mr. S.N. Gupta, Public Prosecutor.
Mr. Surendra Sharma for respondent No.2.

By Court:

The petitioner-complainant has prayed for recalling of the order dated 21.12.05 whereby this court had restored the order dated 22.10.05 passed by Additional Sessions Judge No.9 whereby the accused, Mr. Arvind Sharma was granted bail.

This case has a chequered history. On 2.9.05 the petitioner had lodged a report at Police Station, Adarsh Nagar, wherein he had alleged that on 1.12.02 his daughter, Arti, was married to Arvind Kumar Sharma. At the time of the wedding, the petitioner had given more dowry than he could possibly

afford. However, still Arvind Kumar, his mother, Ramlata, his father, Dwarka Prasad Sharma and his Uncle (Mama) Girraj, would torture his daughter for insufficient dowry. He further narrated few more incidents where Arvind Kumar and his family members had misbehaved with the petitioner and his family members. On the basis of the said report a formal FIR, for offence under Section 498-A and 406 IPC was chalked out against Arvind Kumar Sharma, Dwarka Prasad Sharma, Ramlata Sharma and Shri Girraj Prasad Sharma. The four accused persons moved two separate anticipatory bail applications before the District Judge, Jaipur City, Jaipur, which were subsequently transferred to Addl. Sessions Judge No.2, Jaipur City, Jaipur. However, vide order dated 26.9.05, the said anticipatory bail applications were rejected. Subsequently, Dwarka Prasad Sharma, Ramlata Sharma and Shri Girraj Sharma were arrested by the police and later on bailed out under Section 439 of Cr.P.C. Subsequently, Mr. Arvind Sharma moved another anticipatory bail application. But, the fact about the dismissal of the first anticipatory bail application was not mentioned in the said application. Vide order dated 22.10.05

the Addl. Sessions Judge No.9, Jaipur City accepted the bail application. Since the petitioner was aggrieved by the order dated 22.10.05, he filed an application for cancellation of the bail before this Court. However, this court directed him to file the said application before the Addl. Sessions Judge No. 9. Consequently, the petitioner moved an application before the learned Addl. Sessions Judge. Thereafter the Addl. Sessions Judge recalled the order on 14.12.05 and cancelled the bail granted to Mr. Arvind Sharma. Since Mr. Arvind Sharma was aggrieved by the said order, he filed a Misc. Petition before this court. According to the petitioner he was not impleaded as a party in the said petition. Vide order dated 21.12.05, this court after hearing the learned counsel for Mr. Arvind Sharma and the learned Public Prosecutor for the State had set aside the order dated 14.12.05 and restored the bail order dated 22.10.05. Since the petitioner is aggrieved by the order dated 21.12.05, he has filed the present petition for recalling the said order.

Mr. Vimal Choudhary, the learned counsel for the petitioner, has vehemently argued that while moving the Misc.

Application before the court, the accused had purposefully not impleaded the complainant as a party, although his bail had been cancelled by an application moved by the complainant. Therefore, without hearing the complainant, the order dated 21.12.05 was passed. Secondly that once it was brought to the notice of the learned Addl. Sessions Judge that the accused had hidden vital information from the court, the learned Addl. Sessions Judge had cancelled the bail granted by him. Likewise the order dated 21.12.05 should be recalled.

On the other hand, Mr. Surendra Sharma, the learned counsel for the accused respondent No.2, Mr. Arvind Sharma, has strenuously argued that there was no intention to hide the vital facts from the court. Since Arvind Sharma was working in Pune, he had asked his uncle to pursue the matter with the lawyers at Jaipur. Because of human error, the fact about the first anticipatory bail could not be revealed before the Court. The court had granted the anticipatory bail after hearing the counsel for the accused and the learned Public Prosecutor. Moreover, vide order dated 1.3.06 the learned trial court has granted a regular bail to the respondent No.2. He has further

contended that once the liberty has been restored, it should not be disturbed easily specially when the accused is abiding by the conditions of the bail and when the accused is not interfering with the criminal trial.

We have heard both the learned counsels and have perused the order dated 21.12.05.

Although no one should be permitted to mislead the court of law, although such a person should be dealt with harshly, but due to lapse of time this case has its own peculiar circumstances. Initially vide order dated 22.10.05 the learned Addl. Sessions Judge had granted bail to the accused. However, vide order dated 14.12.05 it had cancelled the bail. Vide order dated 21.12.05 this court had restored the bail order dated 22.10.05. It is not the case of the petitioner that ever since the accused has been restored to liberty, he has misused his liberty to either influence the witnesses, or to interfere with the trial proceedings. It is also not the case of the petitioner that the accused is likely to abscond or refuse to face the trial. Moreover, vide order dated 1.3.06, the learned trial court has

also granted a regular bail to the accused. Since 1.3.06 there is no report that the accused has abused his liberty. In the case of Dolat Ram & Ors. Vs. State of Haryana ((1995) 1 SCC, 349), the Hon'ble Supreme Court has clearly drawn a distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted. According to the Apex Court these two different situations have to be dealt with on different basis. The Hon'ble Supreme Court held as under :-

> "Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trail to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

Therefore, although the conduct of the accused has much to be desired, but the fact that he has not abused the privilege of bail granted to him by this court and by the learned trial court persuades us not to recall the order dated 21.12.05. It is unfortunate that although the relevant facts were not brought to the notice of this Court, or to the notice of the learned Addl. Sessions Judge but the liberty of a citizen is a precious in a democracy. Once the liberty has been restored by the court unless overwhelming situations or conditions dealing with post - bail period convince the court that the privilege of bail is being misused, this court would be reluctant to cancel the bail granted by it.

Moreover, the petitioner is praying that the order dated 21.12.05 be reviewed by this court. Undoubtedly, the power to review is a statutory power. But such power is conspicuously missing from the Criminal Procedure Code. The said power cannot be invoked in the garb of the inherent power of the court. Therefore, the petition is misconceived.

For the reasons stated above, this petition has no

force. It is, hereby, dismissed.

R.S. CHAUHAN, J.

MRG.